

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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FINJAN, INC., a Delaware corporation

Plaintiff,

v.

MCAFEE, INC., a Delaware corporation; SYMANTEC,
CORP., a Delaware corporation, WEBROOT
SOFTWARE, INC., a Delaware corporation,
WEBSense, INC., a Delaware corporation and
SOPHOS, INC., a Massachusetts corporation,

Defendants.
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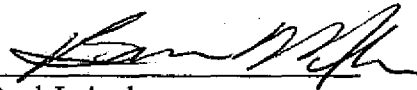
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: Misc No.

:
: (pending in the District of Delaware,
: Civ. Action No. 10-cv-00593-GMS)

:
: **NOTICE OF MR. EZRA SOFER'S**
: **MOTION TO QUASH SUBPOENA**
: **AND FOR PROTECTIVE ORDER**

Please take notice that, upon the accompanying Memorandum of Law and supporting Declarations of Benu Mehra, Esq. and Mr. Ezra Sofer, dated January 26, 2012, Mr. Sofer will move this Court, at Part I thereof, at the United States Courthouse, 500 Pearl Street, New York, New York, at a date and time convenient for the Court, for an order pursuant to Federal Rule of Civil Procedure 45(c)(3) quashing the subpoena *ad testificandum* issued on January 12, 2012, and for a protective order pursuant to Federal Rule of Civil Procedure 26(c) preventing such deposition from proceeding, and awarding such other relief as the Court may deem just and proper.

Dated: January 26, 2012

By: 

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Attorneys for Plaintiff
Finjan, Inc. (now known as FI Delaware Inc.)

7. At this point, I do not recall any information beyond what I previously testified to in my deposition in October 2007, and have no documents to produce to McAfee in response to my subpoena. The best source of any relevant information that I may have would be in the testimony I previously provided in 2007.
8. On January 23, 2012, McAfee rejected my request to withdraw the subpoena despite my lack of knowledge and information.
9. Having to attend another deposition would be extremely burdensome for me, as I do not have information regarding the topics set forth in McAfee's subpoena, and have previously scheduled important commitments in connection with my responsibilities as CEO of Vidyo over the next few months.

I declare under penalty of perjury that the foregoing is true and correct, this 25th day of January, 2012.



Ezra Sofer

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
FINJAN, INC., a Delaware corporation

Plaintiff,

v.

MCAFEE, INC., a Delaware corporation; SYMANTEC,
CORP., a Delaware corporation, WEBROOT
SOFTWARE, INC., a Delaware corporation,
WEBSense, INC., a Delaware corporation and
SOPHOS, INC., a Massachusetts corporation,

Defendants.
-----X

:
:
: Misc. No.

:
: (pending in the District of Delaware,
: Civ. Action No. 10-cv-00593-GMS)

:
: **DECLARATION OF BENU MEHRA**
: **IN SUPPORT OF MR. EZRA**
: **SOFER'S MOTION TO QUASH**
: **SUBPOENA AND FOR PROTECTIVE**
: **ORDER**

I, Benu Mehra, Esq., do declare and state as follows:

1. I am an attorney-at-law of the State of New York and an associate at the law firm of Kramer Levin Naftalis & Frankel LLP, attorneys for plaintiff Finjan, Inc. and non-party Ezra Sofer in the above-captioned matter.

2. I submit this Declaration in support of Mr. Sofer's Motion To Quash A Subpoena And For A Protective Order.

3. Attached as Exhibit 1 is a true and correct copy of the transcript of the October 5, 2007 deposition of Mr. Sofer taken in the previous lawsuit, *Finjan Software Ltd. v. Secure Software Computing Corp.* (06-cv-0369 D. Del).

4. Attached as Exhibit 2 is a true and correct copy of Finjan's Objections And Responses To Defendants' Notice of Deposition of Finjan pursuant to Rule 30(b)(6), served on defendants on November 28, 2011.

5. Attached as Exhibit 3 is a true and correct copy of the January 12, 2012 subpoena served on Mr. Sofer by counsel for McAfee, Inc., issued by the United States District Court for the Southern District of New York, as well as McAfee's, Inc.'s January 12, 2012 Notice of Subpoena To Testify At A Deposition To Mr. Sofer.

6. Attached as Exhibit 4 is a true and correct copy of email communications dated January 23, 2012, between counsel for Finjan and Mr. Sofer and counsel for McAfee.

7. Attached as Exhibit 5 is a true and correct copy of Mr. Sofer's Objections And Responses To McAfee, Inc.'s Subpoena To Produce Documents, served on defendants on January 25, 2012.

8. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of January, 2012.



EXHIBIT 1

[FILED UNDER SEAL]

Ezra Sofer
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IN THE UNITED STATES DISTRICT COURT

3

FOR THE DISTRICT OF DELAWARE

4

Civil Action No. 06-369 GMS

5

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6

FINJAN SOFTWARE, LTD., an Israel corporation,

7

Plaintiff/CounterDefendant,

8

9

vs.

10

SECURE COMPUTING CORPORATION, a Delaware

11

corporation; CYBERGUARD CORPORATION, a

12

Delaware corporation, WEBWASHER AG, a German

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corporation and DOES 1 through 100,

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Defendants/CounterClaimants.

15

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18

VIDEOTAPED DEPOSITION OF EZRA SOFER

19

New York, New York

20

Friday, October 5, 2007

21

22

23

Reported by:

24

Toni Allegrucci

25

JOB NO. 197387

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
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1		1	
2		2	A P P E A R A N C E S:
3		3	
4	October 5, 2007	4	PERKINS COIE, LLP
5	9:33 a.m.	5	Attorneys for Plaintiff/CounterDefendant
6	Highly Confidential Attorneys Eyes	6	101 Jefferson Drive
7	Only Videotaped Deposition of	7	Menlo Park, California 94025
8	EZRA SOFER, held at the Westin Hotel,	8	BY: JAMES HANNAH, ESQ.
9	270 West 43rd Street, New York,	9	
10	New York, pursuant to Notice, before	10	ROBINS, KAPLAN, MILLER & CIRESI, LLP
11	Toni Allegrucci, a Notary Public of the	11	Attorneys for Defendant/CounterClaimants
12	State of New York.	12	2800 LaSalle Plaza
13		13	800 LaSalle Avenue
14		14	Minneapolis, Minnesota 55402
15		15	BY: JAKE M. HOLDREITH, ESQ.
16		16	
17		17	
18		18	ALSO PRESENT:
19		19	PETER LEDWITH, VIDEOGRAPHER
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	2		3
2	MR. VIDEOGRAPHER: Here begins	2	defendants.
3	videotape number one in the deposition	3	MR. VIDEOGRAPHER: Would the Court
4	of Ezra Sofer. In the matter of Finjan	4	Reporter please swear in the witness.
5	v. Secure Computing. In the District	5	E Z R A S O F E R, called as a witness,
6	Court of Delaware.	6	having been duly sworn by a Notary Public,
7	Today's date is October 5, 2007.	7	was examined and testified as follows:
8	The time is 9:33 a.m. This deposition	8	EXAMINATION BY
9	is being taken at the Westin Hotel,	9	MR. HOLDREITH:
10	270 West 42nd Street -- 43rd Street,	10	Q. Good morning, Mr. Sofer.
11	New York, New York, and was made at the	11	A. Good morning.
12	request of Jake Holdreith of the law	12	Q. We met off the record, but I'm Jake
13	offices of Robins, Kaplan & Miller.	13	Holdreith, I'm an attorney for
14	Videographer is Peter Ledwith here	14	Secure Computing and WebWasher. I'm going to
15	on behalf of Esquire Deposition	15	ask you a series of questions today. As the
16	Services, located at 220 West 42nd	16	Court Reporter indicated off the record,
17	Street, New York, New York.	17	everything we say is being taken down in a
18	Would counsel and all present	18	written transcript. It's normal in
19	please identify themselves and whom they	19	conversation for you to anticipate what my
20	represent.	20	question is going to be and to go ahead and
21	MR. HANNAH: James Hannah from	21	answer before I finish, but if we interrupt
22	Perkins Coie, representing the plaintiff	22	each other here that would make it hard to
23	Finjan and here with the witness.	23	make a written record. And so you are doing
24	MR. HOLDREITH: Jake Holdreith for	24	a very good job for waiting for me to finish,
25	Robins, Kaplan, Miller & Ciresi for the	25	I appreciate that, and I will try to do the
	4		5

Pages 2 to 5

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<p>2 same. If you answer my questions I'll 3 conclude that you understood the question and 4 that you have knowledge to answer. If at any 5 time you don't understand one of my questions 6 or you can't answer, let me know and we'll 7 try to clear it up; is that fair? 8 A. Sounds fair. 9 Q. All right. Do you have any 10 questions at this time? 11 A. No. 12 Q. I try to take a break every hour or 13 so, if you want a break at any time for any 14 reason, go ahead and let me know I'll try to 15 accommodate you. If there's a question 16 pending I'll ask you to answer it first 17 before we take a break and then I'll try to 18 get to a break quickly. 19 What is your present employment, 20 Mr. Sofer? 21 A. I am the CFO of Finjan. 22 Q. How long have you been at Finjan? 23 A. Since January 1, 2007. 24 Q. And what was your position 25 immediately prior to being employed at</p>	<p>2 Finjan? 3 A. I've been the VP finance of Amdocs, 4 VP finance for North America operations. 5 Q. What is the name of the company, 6 Amdocs? 7 A. Amdocs, A-M-D-O-C-S. 8 Q. What is the business of Amdocs? 9 A. Amdocs is a company that does 10 billing for Telco (phonetic) companies, for 11 telephone and wireless companies and Amdocs 12 specialize in providing total solution for 13 all the billing of the companies. 14 Q. How did it come to pass that you 15 became employed at Finjan? 16 A. Finjan is headed by Asher Polani, 17 the CEO that knew me from previous jobs, so 18 he approached me and offer me to join Finjan. 19 Q. Had you and Mr. Polani worked at 20 the same company in the past? 21 A. Yes. 22 Q. Where was that? 23 A. The company was named Mint. 24 Q. M-I-N-T? 25 A. Yeah and it was based in Israel.</p>
<p>2 Q. Were you based in the U.S. in your 3 job at Amdocs? 4 A. Yes. 5 Q. Were you based here in the New York 6 area? 7 A. No. 8 Q. Where were you? 9 A. It was in Jersey City. 10 Q. Where is the present location where 11 you do most of your work? 12 A. The offices are in 13 Chrysler Building. 14 Q. Chrysler Building in New York City? 15 A. Yeah. 16 Q. What office space do you have in 17 the Chrysler Building? 18 A. It's the -- what do you mean by 19 office space? 20 Q. How much square footage do you 21 have, for example? 22 A. I think it's 2200, 2250 square 23 foot. 24 Q. Do you have divided offices, are 25 there separate offices within that space?</p>	<p>2 A. There are, there is divided offices 3 and managers' rooms. 4 Q. Do you yourself work in the 5 building, in the Chrysler Building most the 6 time? 7 A. Most of the time I am in the 8 Chrysler Building. 9 Q. So you commute into New York every 10 day? 11 A. Not every day. Most of the time, 12 as you say. 13 Q. Who else is resident in the Finjan 14 offices in New York in the Chrysler Building? 15 A. In the Chrysler Building we have 16 Limor, which is, you know, she was here, as 17 well. We have two sales managers and system 18 engineer, the pre-sales, he does the 19 pre-sales together with the salespeople and 20 we have customer support, one person. 21 Q. One person. 22 So including yourself, is it 23 correct that there are six permanent 24 employees who work out of the New York office 25 at Finjan?</p>

Pages 6 to 9

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<p>2 A. I wouldn't say permanent because it 3 changes. So, for example, with the sales we 4 had one sales, then two, then one so...</p> <p>5 Q. I see. It's about six full-time 6 employees?</p> <p>7 A. About six.</p> <p>8 Q. Do you have any other employment 9 currently, other than your employment at 10 Finjan?</p> <p>11 A. Can you repeat the question?</p> <p>12 Q. Yeah. Do you have any other 13 employment or is Finjan your sole employment 14 right now?</p> <p>15 A. What do you mean "other employment" 16 by "other employment"?</p> <p>17 Q. Are you on the boards of any other 18 companies, for example?</p> <p>19 A. Oh, for myself?</p> <p>20 Q. Correct.</p> <p>21 A. No.</p> <p>22 Q. Sorry my question --</p> <p>23 A. Unfortunately Finjan takes 7 by 24, 24 so...</p> <p>25 Q. All right. What's your title at</p> <p style="text-align: right;">10</p>	<p>2 Finjan currently?</p> <p>3 A. I am the CFO, chief financial 4 officer.</p> <p>5 Q. Was that the title you took when 6 you joined the company?</p> <p>7 A. Yes.</p> <p>8 Q. What are the responsibilities of 9 the CFO at Finjan?</p> <p>10 A. The CFO at Finjan is responsible 11 for the financials and in addition what, you 12 know, I'm trying to look what are the 13 definitions as part the job, so I am 14 responsible for the vendor relationships, if 15 it means, you know, vendors that we are 16 working with. And in addition, when there 17 are negotiations with customers, etc., I am 18 part the process, you know, while the sales 19 mature to that process.</p> <p>20 Q. Do you have any employees in a 21 financial capacity who report to you like a 22 controller or an assistant of some kind?</p> <p>23 A. Yes.</p> <p>24 Q. And what employees do you have who 25 report to you who do financial?</p> <p style="text-align: right;">11</p>
<p>2 A. Can you repeat? Employees?</p> <p>3 Q. Sure, sure.</p> <p>4 Who are the people who report to 5 you who do financial work?</p> <p>6 A. Oh, okay. So there is a VP 7 finance, it is a controller. There is 8 accounting staff, and there is purchasing, 9 which is located in Israel. There is admin 10 that is responsible for the vehicles of the 11 company, employees' vehicles, that's in 12 Israel as well and there is the travel, 13 travel coordinator.</p> <p>14 Q. Who is the VP finance currently?</p> <p>15 A. His name is Ron, Ron Kraitsman.</p> <p>16 Q. K-R-A-I-T-S-M-A-N?</p> <p>17 A. Yeah.</p> <p>18 Q. Who is the controller currently?</p> <p>19 A. The controller is Shay.</p> <p>20 Q. Last name?</p> <p>21 A. Brin.</p> <p>22 Q. How do you spell that?</p> <p>23 A. B-R-I-N. And there is somebody was 24 on board recently that is also a controller 25 but in the U.S.</p> <p style="text-align: right;">12</p>	<p>2 Q. Who is that?</p> <p>3 A. Her name is Jan.</p> <p>4 Q. Jan, like J-A-N?</p> <p>5 A. Jan and the last name I'm not sure 6 I pronounce it right it's Gasperatti.</p> <p>7 Q. Gasperatti?</p> <p>8 A. G-A-S-P-E-R-A-T-T-I.</p> <p>9 Q. Where does Mr. Kraitsman keep his 10 office?</p> <p>11 A. In Israel.</p> <p>12 Q. In Israel. And how about -- is it 13 Mr. Brin?</p> <p>14 A. Yes.</p> <p>15 Q. Where does Mr. Brin keep his 16 office?</p> <p>17 A. In Israel.</p> <p>18 Q. Is Jan a man or woman?</p> <p>19 A. A woman.</p> <p>20 Q. Where does Ms. Gasperatti keep her 21 office?</p> <p>22 A. In San Jose.</p> <p>23 Q. When did Ms. Gasperatti join 24 Finjan?</p> <p>25 A. Two months ago.</p> <p style="text-align: right;">13</p>

Pages 10 to 13

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<p>2 Q. Why did you hire a second 3 controller? 4 A. Jan was working for the company 5 until mid 2006 and she left the company. We 6 wanted to keep her, and there was a woman 7 that took her place that when I came on board 8 I wasn't happy with that woman, so it took 9 six months to convince Jan to return to the 10 job from the time I joined. And I think she 11 does a very good job, according to 12 information that I received prior to her 13 departure, and we wanted to have somebody 14 that quality, so we asked her to join back 15 and she is doing a good job. 16 Q. And so did Finjan already have two 17 controllers, it's just that Ms. Gasperatti 18 replaced an existing controller in San Jose? 19 A. She didn't replace an existing 20 controller because when she was there she had 21 an assistant and the assistant filled her 22 place after she left, she wasn't nominated as 23 a controller so... 24 Q. I see. Where do the accounting 25 staff work, in what office?</p> <p style="text-align: right;">14</p>	<p>2 A. In Israel. 3 Q. Do you know whether you are an 4 employee of a U.S. company called Finjan or 5 an Israeli company called Finjan or both? 6 A. I don't understand the question. 7 Q. You are aware that in the Finjan 8 corporate family there's a U.S. company? 9 A. Yes. 10 Q. And you are aware that there's also 11 an Israeli company? 12 A. Yes. 13 Q. Do you know if you are employed by 14 both of those companies? 15 A. No, I'm an employee of Finjan, Inc. 16 which is the U.S. company. 17 Q. The U.S. company, okay. 18 Are you an officer of any Israeli 19 companies in the Finjan family? 20 A. What do you mean by the question? 21 What do you mean by "officer"? 22 Q. Do you have any duties at any of 23 the other Finjan companies other than Finjan, 24 Inc. in the U.S.? 25 A. No.</p> <p style="text-align: right;">15</p>
<p>2 Q. Does Finjan do any public financial 3 reporting? 4 A. No. 5 Q. Does Finjan do any or have done any 6 auditing of its financials? 7 MR. HANNAH: Objection to form. 8 You can answer. 9 A. What do you mean? Can you repeat 10 the question? 11 Q. Yeah, yeah. 12 Do you hire auditors who audit your 13 financials ? 14 A. Yes. 15 Q. What is the purpose of auditing the 16 financials of Finjan? 17 MR. HANNAH: Objection to form. 18 A. What do you mean by "purpose"? 19 Q. Is it a legal requirement or do you 20 do it for business reasons? 21 A. Finjan is a private company so it's 22 not a legal requirement. 23 Q. So why is it that you have chosen 24 to be audited? 25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">16</p>	<p>2 A. As being a private company that we 3 have investors in the company, I believe the 4 requirement came from the investors. 5 Q. Okay. Are the audited financial 6 statements distributed to the investors? 7 MR. HANNAH: Objection to form. 8 A. There is an audit committee and 9 yes, I believe it is. 10 Q. Do you know who the major 11 shareholders of Finjan are? 12 MR. HANNAH: Objection to form. 13 A. Who do you refer to? 14 Q. Either the names of companies or 15 individuals who hold the majority of shares? 16 MR. HANNAH: Objection to form. 17 A. Finjan has several shareholders, I 18 don't remember all of the shareholders. 19 Q. Are there any very large 20 shareholders who hold a large portion of the 21 shares? 22 MR. HANNAH: Objection to form. 23 A. Yes. 24 Q. Who are they? 25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">17</p>

Pages 14 to 17

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<p>2 A. Finjan has several shareholders 3 that, you know, invested in the company. The 4 major ones that I remember are Benchmark, 5 Harbourvest, Israel Seed Partners, Cisco, 6 Microsoft. 7 Can you repeat the ones that I said 8 just to make sure. 9 Q. Yeah. You said Benchmark, I think 10 it is Harberwest? 11 A. Harbourvest. 12 Q. Israel City Partners? 13 A. Israel Seed Partners. 14 Q. And then you said Cisco and 15 Microsoft? 16 A. Okay. So I missed Bessimer 17 (phonetic). 18 Q. With the exception of Microsoft and 19 Cisco, are the other investors you just named 20 venture capital companies? 21 MR. HANNAH: Objection to form. 22 A. Yes, they are. 23 Q. How active are the shareholders in 24 voicing their views about managing Finjan? 25 MR. HANNAH: Objection to form.</p>	<p>2 A. What do you mean by "how active"? 3 Q. Do any of the shareholders voice 4 any views about management of Finjan, or are 5 they simply passive? 6 MR. HANNAH: Objection to form. 7 A. I don't know. 8 Q. Okay. I'm going to take that as a 9 sign that they are probably not very active. 10 Do you happen to know what the outstanding 11 share value is for Finjan right now? 12 A. What do you mean "outstanding"? 13 Q. I'll tell you what, we'll get to 14 the financials, I can ask you a more specific 15 question. I would like to ask you now about 16 your recordkeeping and accounting systems and 17 by that I mean the systems you use to record 18 financial data and to report it or to look at 19 it. 20 Do you have any system for 21 recording revenue when the company recognizes 22 revenue? 23 MR. HANNAH: Objection to form. 24 A. Could you define what you mean by 25 "system"?</p>
18	19
<p>2 Q. Yeah. Do you have paper books 3 where you enter revenue transactions or do 4 you have a computer system where you enter 5 revenue transactions or any place where you 6 record that information? 7 A. You know, we have the accounting -- 8 MR. HANNAH: Objection to form. 9 Go ahead. 10 Q. He likes to object. 11 A. We have the accounting system. 12 Q. Yeah. 13 A. Which is used to record the 14 transactions, and we use Excel sheets. 15 Q. Do you use simply Microsoft Excel 16 or do you have an accounting interface that 17 works with Excel? 18 A. We use Microsoft Excel. 19 Q. Is there a single accounting system 20 for all of the Finjan companies or do 21 different companies have separate systems? 22 A. At the moment we are trying to 23 integrate all the system to one system, but 24 there are different -- means in the U.S. 25 there's one system, in Europe there's another</p>	<p>2 system and Israel is the main system that 3 hopefully we'll be able to integrate all of 4 these to one system to one database. 5 MR. HANNAH: For the record, I 6 would just like to designate the entire 7 transcript highly confidential attorneys 8 eyes only. We're getting into some 9 financial information on the private 10 company, so we'll go ahead and 11 dedesignate as such after. 12 Q. What your counsel has just done is 13 there's an order in this case from the court 14 and when Mr. Hannah has now designated the 15 transcript "confidential," that means I can't 16 share it with anybody, I can't show it to 17 anybody, so it's all private, it will be held 18 in confidence. 19 A. Happy to know that. 20 Q. Is there a single person who is 21 responsible for entering data into the U.S. 22 accounting system or do -- can several 23 different people enter data? 24 A. A single person to the accounting 25 system?</p>
20	21

Pages 18 to 21

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<p>2 Q. Right.</p> <p>3 A. Currently is it only one.</p> <p>4 Q. Who is that person?</p> <p>5 A. That's Jan.</p> <p>6 Q. Jan. Can you explain for me please</p> <p>7 what is the procedure that Finjan uses so</p> <p>8 that financial information can be entered</p> <p>9 into the accounting system by Jan?</p> <p>10 A. Can you repeat the question?</p> <p>11 Q. Yeah. What I'm trying to get at is</p> <p>12 how is it that Jan becomes aware of</p> <p>13 information that she needs to enter into the</p> <p>14 accounting system?</p> <p>15 A. She has interaction with several</p> <p>16 people in the company.</p> <p>17 Q. Who provides information to Jan for</p> <p>18 the accounting system?</p> <p>19 A. It's not somebody specific.</p> <p>20 Q. What's the group, is it all of the</p> <p>21 salespeople or something else?</p> <p>22 A. It's not only sales.</p> <p>23 Q. Okay.</p> <p>24 A. It's sales, it's expenses, anything</p> <p>25 that involves operation of the company. So</p> <p style="text-align: right;">22</p>	<p>2 it's almost, you know, the people in the</p> <p>3 company, I can't name all the people that are</p> <p>4 there.</p> <p>5 Q. All right. Do you ever see printed</p> <p>6 reports from the Excel accounting system that</p> <p>7 report data back to you?</p> <p>8 MR. HANNAH: Objection to form.</p> <p>9 A. You said Excel accounting system?</p> <p>10 Q. Well, let me --</p> <p>11 A. It's not something that exists.</p> <p>12 Q. Let me rephrase my question.</p> <p>13 Do you ever see printed reports</p> <p>14 from the accounting system that report data</p> <p>15 back to you?</p> <p>16 A. No.</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 Go ahead.</p> <p>19 A. Sorry.</p> <p>20 Q. Do you ever access the accounting</p> <p>21 system in order to look at the data on your</p> <p>22 computer?</p> <p>23 A. Can you repeat the question?</p> <p>24 Q. Yeah. Do you ever access the</p> <p>25 accounting system so that you can look at</p> <p style="text-align: right;">23</p>
<p>2 data?</p> <p>3 A. Myself?</p> <p>4 Q. Yeah.</p> <p>5 A. No.</p> <p>6 Q. Do you do anything to become aware</p> <p>7 of the sales and expenses of Finjan?</p> <p>8 A. Yes.</p> <p>9 Q. How do you do that?</p> <p>10 A. I request reports.</p> <p>11 Q. Who do you request reports from?</p> <p>12 A. The VP finance.</p> <p>13 Q. Mr. Kraitsman?</p> <p>14 A. Yes.</p> <p>15 Q. What are contained in the reports</p> <p>16 that you receive from Mr. Kraitsman?</p> <p>17 A. Again, when you say "reports," what</p> <p>18 are you referring to?</p> <p>19 Q. Any reports that you ask for from</p> <p>20 Mr. Kraitsman?</p> <p>21 A. So the reports contain anything</p> <p>22 that is related to the financial operations</p> <p>23 of the company.</p> <p>24 Q. Are these printed reports on paper?</p> <p>25 A. Usually it's files that are</p> <p style="text-align: right;">24</p>	<p>2 transferred by e-mail.</p> <p>3 Q. Is there a regular schedule for</p> <p>4 Mr. Kraitsman to provide reports to you?</p> <p>5 A. We have quarterly reports, so at</p> <p>6 least once a quarter he needs to do the job.</p> <p>7 Q. All right. Is there -- each</p> <p>8 quarter is there one report or more than one</p> <p>9 report that you receive from Mr. Kraitsman?</p> <p>10 A. Again, when you say "reports," what</p> <p>11 are you referring to?</p> <p>12 Q. These reports that are transferred</p> <p>13 to you by Mr. Kraitsman electronically, is</p> <p>14 there a single report for the quarter or</p> <p>15 would you break out separately, like a sales</p> <p>16 report and an expense report and some other</p> <p>17 kind of report?</p> <p>18 A. It's usually done by iterations, so</p> <p>19 what I see, I see an Excel file, so I'd say</p> <p>20 it's one report.</p> <p>21 Q. One file?</p> <p>22 A. Could be -- the financials are one</p> <p>23 file, yeah.</p> <p>24 Q. Do you know if that Excel file</p> <p style="text-align: right;">25</p>

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<p>2 everything that's been entered into Excel, or 3 is it filtered so it's some subset of the 4 data? 5 MR. HANNAH: Objection to form. 6 A. Again, when you say "everything 7 that is in the file," what do you mean by 8 that? 9 Q. Let me ask a different question and 10 see if I can understand better. 11 How is the spreadsheet organized 12 that you see? 13 MR. HANNAH: Objection to form. 14 A. The spreadsheet has P and L portion 15 and the balance sheet portion. 16 Q. Can you give me a sense of the 17 length of this set of spreadsheets, is it 18 many, many pages or just a few pages? 19 A. It's a few pages. 20 Q. Do you print out copies of that 21 spreadsheet in order to look at it or do you 22 look at it just on your computer? 23 A. It's not -- I mean, it depends if 24 I'm not traveling so I just look at it. If I 25 need to, you know, to have a flight, so I</p> <p style="text-align: right;">26</p>	<p>2 take a printout with me and then I don't keep 3 the copy but usually it's reviewing it 4 through the computer. 5 Q. Okay. Do you keep at Finjan any 6 archive of a printed copy of each quarterly 7 report somewhere? 8 A. I do not keep, I believe it's kept 9 somewhere. 10 Q. Do you know, for example, 11 Mr. Kraitsman prints a copy and saves it in a 12 paper file somewhere? 13 A. I don't know. 14 Q. Do you have any ability to find out 15 what the sales of Finjan products have been 16 by product for a given time period if you 17 want to know that? 18 MR. HANNAH: Objection to form. 19 A. Again, when you say "product 20 lines," what are you referring to? 21 Q. Do you know what products Finjan 22 sells currently? 23 A. Yes. 24 Q. What are those? 25 A. There are -- I would say we sell</p> <p style="text-align: right;">27</p>
<p>2 appliances and the appliances are divided to 3 sizes, so there are different sizes, so it's 4 -- I don't know if I remember all the line of 5 products but it's NG 5,000, 6,000 and 8,000, 6 these are the series, the major series. 7 Probably there are some more I'm not aware 8 of. Maybe there was a 1,000 series as well, 9 which we stopped selling. 10 Q. So if you wanted to know what the 11 sales of the NG 5,000 were by quarter, is 12 that information that you can obtain? 13 MR. HANNAH: Objection to form. 14 A. I could ask for it. Today we are 15 not monitoring that. I believe it's relating 16 to the size of the company, it's not 17 significant. 18 Q. Where is the data kept that would 19 tell you the sales of the appliance by a 20 given time period, the sales volume? 21 A. That relates to a previous question 22 that you ask regarding an integrated 23 financial system. The company implemented a 24 SAP, ARP system, SAP is the vendor that 25 provides that and the information resides</p> <p style="text-align: right;">28</p>	<p>2 there. 3 Q. Do you have an understanding of 4 whether the SAP system is maintained 5 internally at Finjan or whether SAP provides 6 and hosts the information as a service and 7 keeps it at a SAP server somewhere that's not 8 controlled by Finjan? 9 A. Can you repeat the question? 10 Q. Yeah. Do you have your own SAP 11 server internally within Finjan? 12 A. I don't know. Sorry. Could be I 13 don't know if the data is hosted or we use 14 it. 15 Q. If you want data from the SAP 16 system who do you ask to obtain that? 17 A. The VP finance. 18 Q. Mr. Kraitsman? 19 A. Yeah. 20 Q. What is your understanding of what 21 information is kept in the SAP system? 22 MR. HANNAH: Objection to form. 23 A. You asking my understanding of 24 what's contained there? 25 Q. Right.</p> <p style="text-align: right;">29</p>

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<p>2 A. Well, there is an ERP system so it 3 contains, you know, all the inventory and 4 appliances, probably the flow of the 5 appliances. 6 Q. Do you know if the ERP system has 7 any data that reports sales of products? 8 A. I don't know. 9 Q. Can you tell me what the total 10 sales of the NG appliances was in the year 11 2006? 12 MR. HANNAH: Objection to form. 13 A. Are you referring just to the NG 14 appliances or to the total sales of the 15 company? 16 Q. Let me ask you first about the NG 17 appliances specifically. 18 Do you know what the sales of NG 19 appliances in 2006 was? 20 A. We, as a company, I tell you we 21 don't have a breakdown of by line of product 22 that we are looking at or monitoring, so I 23 know the total sales of the company. 24 Q. Okay. Can you tell me what events 25 generate revenue for Finjan, you've explained 30</p>	<p>2 already that there are sales of appliances, 3 are there any other events that generate 4 revenue? 5 MR. HANNAH: Objection to form. 6 A. With the appliance we have 7 maintenance that is part of that, as well as 8 on the hardware we have kind of support for 9 the hardware. 10 Q. Does Finjan issue licenses or 11 subscriptions to customers to use software on 12 the appliances? 13 MR. HANNAH: Objection to form. 14 A. When you are saying license or 15 subscription, can you define what you mean? 16 Q. Sure. I've seen references in 17 Finjan documents to customers paying not only 18 to purchase an appliance but also paying for 19 the right to use Finjan software on the 20 appliance and that's referred to as a 21 subscription. 22 Are you familiar with that? 23 A. Yes. 24 Q. Do you recognize subscription 25 revenue separately from revenue for the sale 31</p>
<p>2 of an appliance? 3 A. This information appears in our 4 financial reports. And since the appliance 5 is not standalone but will only be available 6 with the software, we recognize the revenues 7 as one packet, which means appliance and the 8 software. 9 Q. You've now identified sales of 10 appliances including a subscription to 11 software, maintenance and support as events 12 that generate revenue for Finjan. 13 Are there any other events that 14 generate revenue for Finjan? 15 MR. HANNAH: Objection to form. 16 A. "Other events," can you refer to 17 what you mean by that? 18 Q. In any other way that money comes 19 into the company as revenue, other than 20 appliance sales, subscriptions, maintenance 21 and support? 22 MR. HANNAH: Objection to form. 23 A. There are revenues that come to the 24 company that are from, for example, cash 25 deposits, you have interest income. You 32</p>	<p>2 might have some other that I'm not aware of. 3 Q. Are you familiar with a license 4 taken by Microsoft in 2005? 5 A. This was prior to my arrival to the 6 company. I know that there was a license 7 deal. 8 Q. Other than license revenue from 9 Microsoft in 2005, is there any revenue to 10 Finjan from licensing its patents? 11 MR. HANNAH: Objection to form. 12 A. Can you define what you are 13 referring to, which period? 14 Q. I'm actually intending to ask a 15 very comprehensive question. Whether the 16 company, other than revenue from a Microsoft 17 license in 2005, has ever had any revenue for 18 licensing its patents? 19 MR. HANNAH: Objection to form. 20 A. Prior to my arrival to the company? 21 Q. Yeah, at any time. 22 A. I believe there was. I mean, I 23 don't know amounts or I don't know. 24 Q. Do you know -- do you have any 25 specific licenses in mind when you give that 33</p>

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<p>2 answer?</p> <p>3 A. No. I know like the company has</p> <p>4 changed its business model in 2005 from</p> <p>5 licenses to subscription base. So that's why</p> <p>6 I'm saying probably there were license</p> <p>7 revenues prior to that because the company</p> <p>8 did operate.</p> <p>9 Q. Okay. So I need to clarify because</p> <p>10 we may be misunderstanding each other.</p> <p>11 The licenses you are referring to</p> <p>12 prior to 2005 were licenses to end users; is</p> <p>13 that what you had in mind?</p> <p>14 A. Yes.</p> <p>15 Q. And do you understand the Microsoft</p> <p>16 license was a license not for Microsoft to</p> <p>17 buy and use Finjan products, but a license</p> <p>18 for Microsoft to have the right to practice</p> <p>19 Finjan's patents?</p> <p>20 A. I'm not familiar --</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 Go ahead.</p> <p>23 A. I'm not familiar with the details</p> <p>24 of the Microsoft deal.</p> <p>25 Q. Other than the accounting system</p> <p style="text-align: right;">34</p>	<p>2 you just described to me and the SAP ERP</p> <p>3 system, are there any systems you have for</p> <p>4 recording financial data for the company?</p> <p>5 A. Can you be more precise, "financial</p> <p>6 data"?</p> <p>7 Q. I mean to be very comprehensive, so</p> <p>8 I want to learn about everywhere that you use</p> <p>9 to record financial data?</p> <p>10 A. Financial data resides in the</p> <p>11 accounting systems. So not even the SAP, SAP</p> <p>12 is data but, you know, the formal accounting</p> <p>13 reports that was submitted to you the</p> <p>14 information is provided from the accounting</p> <p>15 system, so let's be clear on that. There are</p> <p>16 a lot of supporting Excel files, SAP, etc.,</p> <p>17 but the system that we rely on is the</p> <p>18 accounting system.</p> <p>19 Q. I think you just referred to a</p> <p>20 report that was provided to me, did I</p> <p>21 understand correctly?</p> <p>22 A. The financial reports, yeah.</p> <p>23 Q. Do you mean for the report that</p> <p>24 Mr. Hannah just handed to me this morning?</p> <p>25 A. Yeah, this is the product you</p> <p style="text-align: right;">35</p>
<p>2 referred to.</p> <p>3 Q. Okay. Just for the record,</p> <p>4 Mr. Sofer and I are looking at a document</p> <p>5 entitled "Finjan Software, Inc. and its</p> <p>6 subsidiaries consolidated financial</p> <p>7 statements as of December 31, 2006," and it's</p> <p>8 endorsed with a Ernst & Young logo on the</p> <p>9 first page.</p> <p>10 Is that the document you were</p> <p>11 referring to?</p> <p>12 A. Yes, these are Finjan's financial</p> <p>13 reports.</p> <p>14 Q. Does Finjan have any system for</p> <p>15 recording its costs?</p> <p>16 A. The accounting system.</p> <p>17 Q. Costs are in the accounting system?</p> <p>18 A. Yeah.</p> <p>19 Q. Does Finjan have any system where</p> <p>20 it records a calculation of its profit?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. Again, when you say "system," what</p> <p>23 do you mean by that?</p> <p>24 Q. When I'm talking about systems, I</p> <p>25 mean to refer to places where you record</p> <p style="text-align: right;">36</p>	<p>2 information; it could be on paper, it could</p> <p>3 be in a computer, it could be in a hosted</p> <p>4 system?</p> <p>5 A. So we're using Excel sheets.</p> <p>6 Q. Costs -- sorry, profits are</p> <p>7 calculated and reported to Excel sheets?</p> <p>8 A. There are the accounting system</p> <p>9 where information comes from there and/or</p> <p>10 extracted to Excel sheets.</p> <p>11 Q. Are these Excel sheets the same</p> <p>12 reports that Mr. Kraitsman sends you</p> <p>13 quarterly or is that a different report?</p> <p>14 A. The reports that are sent to me.</p> <p>15 Q. So Mr. Kraitsman reports to you</p> <p>16 includes calculation of profits?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. Again, when you say "calculation of</p> <p>19 profits," what are you referring to?</p> <p>20 Q. Any calculation of profits, I think</p> <p>21 you just said there's some Excel sheet that</p> <p>22 records a calculation of profits; is that</p> <p>23 right?</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 A. Yeah, but I'm saying calculation of</p> <p style="text-align: right;">37</p>

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<p>2 profit could be a lot of variations. 3 So what are you referring to by 4 saying "calculation of profits"?</p> <p>5 Q. So I'm asking you what's on the 6 report that Mr. Kraitsman sends to you, is 7 there some calculation of profits on that 8 report?</p> <p>9 A. There is --</p> <p>10 MR. HANNAH: Objection to form. 11 Go ahead.</p> <p>12 A. There is an Excel sheet which 13 states the revenues and costs and what are 14 the derived profit or loss.</p> <p>15 Q. Is the derived profit or loss 16 stated in the sheet that you see?</p> <p>17 A. It's similar to the financial 18 reports that you received.</p> <p>19 Q. All right.</p> <p>20 MR. HOLDREITH: Counsel, we of 21 course would have liked to have those 22 quarterly reports for this deposition. 23 If you can get them today I would like 24 you to do that. If you want to take a 25 break to see if they can be made</p> <p style="text-align: right;">38</p>	<p>2 available here today, I think that would 3 be very helpful.</p> <p>4 MR. HANNAH: Okay. We can look 5 into it.</p> <p>6 MR. HOLDREITH: Why don't you do 7 that right now. We'll take a break so 8 you can do that.</p> <p>9 MR. HANNAH: We'll go off the 10 record.</p> <p>11 MR. VIDEOGRAPHER: 10:12. Off the 12 record. 13 (Off-the-record discussion held.) 14 (Recess taken.)</p> <p>15 MR. VIDEOGRAPHER: 10:16. On the 16 record.</p> <p>17 MR. HANNAH: During the break we 18 were asked to find a quarterly report 19 that is currently in use right now, we 20 offered to go and search for a draft 21 quarterly report but it is our 22 understanding that any past or 23 historical quarterly reports have -- are 24 not kept in the regular course of 25 business and the information is somewhat</p> <p style="text-align: right;">39</p>
<p>2 similar to the financial reports that 3 have been produced in this case. 4 Counsel has asked that we not go get the 5 current draft because he didn't think it 6 would be an efficient use of time.</p> <p>7 MR. HOLDREITH: Yeah, Counsel, what 8 I indicated to you off the record is I'm 9 interested in historical periodic 10 information, particularly quarterly or 11 monthly would be helpful to me.</p> <p>12 Q. So my understanding is that, 13 Mr. Sofer, you do not think you have access 14 to historical quarterly reports; is that 15 accurate?</p> <p>16 A. Yes.</p> <p>17 MR. HOLDREITH: Counsel, I 18 understand Finjan is a small company, 19 but the periodic financial information 20 is important to us. I would like you to 21 ask Mr. Kraitsman if he has it and if it 22 can be made available.</p> <p>23 MR. HANNAH: We can look into that, 24 but as I've explained our understanding 25 is that those reports are not kept in</p> <p style="text-align: right;">40</p>	<p>2 the regular course of business and that 3 the information is in the financial 4 statements that have been produced in 5 this case.</p> <p>6 Q. Okay. Mr. Sofer, have you since 7 January 2007, since you started at Finjan, 8 done anything to preserve financial reports 9 that you see electronically or on paper to 10 ensure that they are not lost or destroyed?</p> <p>11 MR. HANNAH: I'm going to put an 12 objection to form. To the extent that 13 this calls for any attorney-client 14 communication or direction of counsel, 15 having to do with this current pending 16 litigation, I instruct you not to 17 answer. I believe counsel is asking for 18 a "yes" or "no" question and you may 19 answer that.</p> <p>20 A. Can you repeat the question?</p> <p>21 Q. Sure. Since you started at Finjan 22 in January 2007, have you done anything to 23 preserve financial reports that you see 24 either electronically or on paper to ensure 25 that they are not lost or destroyed?</p> <p style="text-align: right;">41</p>

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<p>2 MR. HANNAH: I would put the same 3 objection and the same instruction. 4 A. What I would like to understand is 5 what do you mean by "preserve"? 6 Q. Have you either printed them and 7 saved them in a paper file or saved them 8 electronically to a file somewhere so they 9 are accessible today? 10 A. I do not print the report, I do not 11 save a printed copy. They are in my e-mail. 12 Q. Do you still have copies of the 13 quarterly reports that Mr. Kraitsman sent you 14 in the past? 15 A. I've been here for three quarters 16 so these copies are with me in the e-mail. 17 Q. I will ask that you please continue 18 to preserve those. I think they may be 19 important to this case and we're going to 20 make a request that your counsel produce 21 them, so please don't do anything to delete 22 those. 23 A. Okay. 24 Q. Do you think that there are e-mails 25 or reports with financial information for the</p> <p style="text-align: right;">42</p>	<p>2 company that you have deleted? 3 MR. HANNAH: Objection to form. 4 A. Again e-mails that contain 5 financial information, it's correspondence, 6 internal correspondence, some are saved, some 7 are deleted, depending on my review and 8 decision if that's information that I 9 required to hold for my personal needs or 10 not. 11 Q. Do I understand correctly that your 12 practice is to when you get an e-mail decide 13 whether it's important enough for your 14 purpose is to save, if it is you save it, if 15 it's not you delete it? 16 A. Yeah. 17 MR. HANNAH: Objection to form. 18 Q. And so there is e-mail obviously 19 that you have deleted over the last seven 20 months or ten months because it has not been 21 important to you? 22 MR. HANNAH: Objection to form. 23 A. Again, what kind of e-mails are you 24 referring to? 25 Q. Without regard to -- I'm not asking</p> <p style="text-align: right;">43</p>
<p>2 what's in them yet, but there are some 3 e-mails that you've deleted over the last ten 4 months that have Finjan financial 5 information? 6 MR. HANNAH: Objection to form. 7 And again, if this is calling for any 8 direction of counsel having to do with 9 the current litigation I'll instruct you 10 not to answer, but I believe we're 11 asking for a "yes" or "no" answer and I 12 think you've already answered the 13 question, but you can go ahead. 14 A. So if you are asking if I deleted 15 e-mails, I do delete it because I don't want 16 my inbox to be too big. 17 Q. When you've deleted those e-mails, 18 you haven't archived a copy somewhere or 19 printed a copy somewhere to save? 20 MR. HANNAH: Objection to form and 21 I'll give you the same instruction. 22 A. If you are asking for archiving 23 information, I'm not the repository of the 24 data for the company, so it's kept with the 25 company somewhere.</p> <p style="text-align: right;">44</p>	<p>2 Q. You are talking about backup 3 systems that may exist? 4 A. No. You ask specifically on 5 financial information? 6 Q. Right. 7 A. So I'm saying if you are referring 8 to quarterly reports I could receive 9 quarterly report and decide not to keep them, 10 but I'm not the repository of the financial 11 reports, the company has a VP finance and a 12 controller that create the reports, I believe 13 they have the copies. 14 Q. Do you know specifically that the 15 controller or the VP finance does keep a copy 16 of those quarterly reports that you've 17 deleted? 18 MR. HANNAH: Objection to form. 19 A. No. 20 Q. As to other e-mail that you've 21 deleted, do you know specifically whether 22 somewhere within Finjan a copy has been kept? 23 MR. HANNAH: Objection to form. 24 A. No. 25 Q. Do you have any involvement with</p> <p style="text-align: right;">45</p>

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<p>2 efforts by Finjan to sell or license its SDK? 3 MR. HANNAH: Objection to form. 4 A. Again, could you repeat the 5 question? 6 Q. Sure. Do you have any involvement 7 with Finjan's efforts to sell or license an 8 SDK? 9 MR. HANNAH: Objection to form. 10 A. No. 11 Q. You mentioned that you do become 12 involved in -- pardon me, I want to be as 13 accurate as I can here -- in the sales 14 function, did I understand that correctly, 15 customer negotiations? 16 A. When a sales function mature, 17 matures to a negotiation phase usually I ask 18 to be involved. 19 Q. What is the -- what is the 20 involvement that you have in the customer 21 negotiation? 22 A. When I'm looking at sales that 23 mature so there are issues as payment terms 24 that I need to be aware of, there are issues 25 of length of the subscription that influence</p> <p style="text-align: right;">46</p>	<p>2 the amount that are being able to be 3 recognized, so I'm involved in that as well. 4 And legal terms or commercial terms I usually 5 need to be aware of any changes that are done 6 in our agreements. 7 Q. Do you get involved in negotiating 8 price? 9 A. Usually not. 10 MR. HANNAH: Objection to form. 11 Go ahead. Give me a second I need 12 to get the objection on the record. 13 Thank you. 14 Q. Are there -- do you know how many 15 customer negotiations you've been involved in 16 since you joined Finjan? 17 A. When you are referring to "customer 18 negotiations," what are you referring to? 19 Q. The activities you just described 20 in your last answer. 21 A. There were, you know, quite a few, 22 not too many, three or four. 23 Q. "Three or four." 24 Can you explain to me because I'm 25 not a financial person generally -- let me</p> <p style="text-align: right;">47</p>
<p>2 back up. 3 I've read in your financial 4 statement the description of how you book 5 revenue for subscriptions, but I don't feel 6 like I have a good understanding of it. 7 Can you describe to me as a lay 8 person generally what the rules are for how 9 you book revenue for a subscription? 10 MR. HANNAH: Objection to form. 11 A. When Finjan finalizes a sale there 12 is a period that is defined for the 13 subscription, whether one year or three 14 years, and we recognize the revenue on a 15 ratable basis, it means we prorate the 16 revenues along the period of the 17 subscription. 18 Q. Is that as simple as simply 19 dividing the total revenue by the number of 20 years of the subscription? 21 MR. HANNAH: Objection to form. 22 A. Yes. 23 Q. Is the revenue which is prorated 24 100 percent of the revenue, or is it some 25 portion, for example, related to the</p> <p style="text-align: right;">48</p>	<p>2 subscription as opposed to the maintenance or 3 the support? 4 MR. HANNAH: Objection to form. 5 A. What we do is we don't separate the 6 appliance from the revenue, it means this is 7 integrated and the software and the appliance 8 are recognized together. 9 Q. How about maintenance and support, 10 are they included in the prorated amount? 11 A. The maintenance and support are not 12 included because they might be on different 13 periods. 14 Q. What is the longest subscription 15 period that you know of that Finjan has 16 entered into an agreement for? 17 MR. HANNAH: Objection to form. 18 A. The longest is three years. 19 Q. Three. 20 Do you prorate it on an annual 21 basis, in other words, you divide it by years 22 not months? 23 A. We divide it by month. 24 Q. So if you have a one year 25 subscription, will you prorate that over</p> <p style="text-align: right;">49</p>

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<p>2 twelve months?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. A one year subscription, which is</p> <p>5 defined for twelve months, will be prorated</p> <p>6 for twelve months.</p> <p>7 Q. Is Finjan on a calendar financial</p> <p>8 year?</p> <p>9 A. Yes.</p> <p>10 Q. Year-end December 31st?</p> <p>11 A. Yes.</p> <p>12 Q. When you receive reports from</p> <p>13 Mr. Kraitsman, are the revenues broken down</p> <p>14 in any way either by geography or by which</p> <p>15 Finjan company generated the revenue or in</p> <p>16 any other way?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. The reports are divided to two line</p> <p>19 items, which is sales in the U.S. and the</p> <p>20 rest of the world.</p> <p>21 Q. Is there more than one company</p> <p>22 within the Finjan family that makes sales?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. Can you repeat the question?</p> <p>25 Q. Yeah, I'll ask a more specific</p> <p style="text-align: right;">50</p>	<p>2 question, that wasn't very clear, I'm sorry.</p> <p>3 Does Finjan, Inc. U.S.A. make any</p> <p>4 sales?</p> <p>5 A. Finjan, Inc. U.S.A.?</p> <p>6 Q. Right.</p> <p>7 A. Yes.</p> <p>8 Q. Does Finjan Israel make any sales?</p> <p>9 A. Yes.</p> <p>10 Q. Is there any report that separately</p> <p>11 reports the sales of Finjan, Inc. in the U.S.</p> <p>12 versus the sales of Finjan Israel?</p> <p>13 MR. HANNAH: Objection to form.</p> <p>14 A. When you say "any report," what are</p> <p>15 you referring to?</p> <p>16 Q. Does Mr. Kraitsman's quarterly</p> <p>17 report separately report sales of Finjan,</p> <p>18 Inc. U.S.A. versus sales of Finjan Israel?</p> <p>19 A. No, it's not separate.</p> <p>20 Q. What sales does Finjan Israel make?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. Finjan Israel, I don't see</p> <p>23 standalone reports for Finjan Israel.</p> <p>24 Q. Are they product sales or something</p> <p>25 else?</p> <p style="text-align: right;">51</p>
<p>2 MR. HANNAH: Objection to form.</p> <p>3 A. Again "product sales," what are you</p> <p>4 referring to?</p> <p>5 Q. Well, what are the products that</p> <p>6 Finjan Israel sells?</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 A. Finjan Israel sell or invoices our</p> <p>9 customers other than the U.S., so it's all</p> <p>10 our products.</p> <p>11 Q. So is it true that any sale of a</p> <p>12 Finjan product outside the U.S. is made by</p> <p>13 Finjan Israel?</p> <p>14 MR. HANNAH: Objection to form.</p> <p>15 A. Finjan, Inc., which is the U.S.</p> <p>16 company, issues invoices for the U.S., Finjan</p> <p>17 Israel issues invoices for the rest of the</p> <p>18 world. If you ask specifically I do not know</p> <p>19 if there is a case where, you know, there was</p> <p>20 an invoice maybe, I don't know but from your</p> <p>21 question, so all the sales in the U.S. are</p> <p>22 done through Finjan, Inc. and the sales in</p> <p>23 Israel are done through -- or the sales in</p> <p>24 the rest of the world are done through</p> <p>25 Israel.</p> <p style="text-align: right;">52</p>	<p>2 Q. All right. Are the invoices that</p> <p>3 are issued by Finjan Israel for sales outside</p> <p>4 the U.S., are those paid to Finjan Israel</p> <p>5 when they are paid?</p> <p>6 A. Yes.</p> <p>7 Q. Does Finjan, Inc. recognize any</p> <p>8 revenue from sales invoiced by Finjan Israel</p> <p>9 outside the U.S.?</p> <p>10 MR. HANNAH: Objection to form.</p> <p>11 A. I need you to repeat the question.</p> <p>12 Q. Sure. For sales that are invoiced</p> <p>13 by Finjan Israel that are outside the U.S.,</p> <p>14 does Finjan, Inc. recognize any revenue?</p> <p>15 MR. HANNAH: Objection to form.</p> <p>16 A. No.</p> <p>17 Q. Do you know if any sales outside</p> <p>18 the U.S. are included in Finjan, Inc.'s</p> <p>19 income for income tax purposes in the</p> <p>20 United States?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. Again, when you are defining</p> <p>23 "Finjan, Inc.," which entry are you referring</p> <p>24 to?</p> <p>25 Q. Let's be precise about that. I'm</p> <p style="text-align: right;">53</p>

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<p>2 going to get a document out.</p> <p>3 Okay. I've now handed you what was</p> <p>4 previously marked as Exhibit 1001 during</p> <p>5 Mr. Ben-Itzhak's deposition and it's a copy a</p> <p>6 document called "Finjan Software Inc. and its</p> <p>7 subsidiaries consolidated financial</p> <p>8 statements as of December 31, 2005."</p> <p>9 For the record, it's identified</p> <p>10 with Bates No. FIN 09696 through 09717. And</p> <p>11 what I'm referring to there, Mr. Sofer, just</p> <p>12 so you know is this little number at the</p> <p>13 bottom that starts with FIN, that was put on</p> <p>14 there by the attorneys to help us keep track</p> <p>15 of the pages.</p> <p>16 Is Exhibit 1001 a copy of a Finjan</p> <p>17 Software, Inc. consolidated financial</p> <p>18 statement?</p> <p>19 A. It looks like.</p> <p>20 Q. If you could look at page seven of</p> <p>21 that report which is Bates No.'d FIN 9703.</p> <p>22 A. Yes.</p> <p>23 Q. There's a description of some</p> <p>24 companies that are numbered one, two, three,</p> <p>25 four.</p> <p style="text-align: right;">54</p>	<p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. The company number two is called</p> <p>5 Finjan, Inc. and the text explains that it's</p> <p>6 now a Delaware company.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Is that the company that you work</p> <p>10 for?</p> <p>11 A. You are asking if I am employed by</p> <p>12 Finjan, Inc.?</p> <p>13 Q. Right.</p> <p>14 A. I don't know specifically what is</p> <p>15 the legal entity that if it's the parent</p> <p>16 company or Finjan, Inc., so...</p> <p>17 Q. Is there a company that sits above</p> <p>18 Finjan, Inc., the Delaware company?</p> <p>19 A. Yes.</p> <p>20 Q. And what is that company called?</p> <p>21 A. Finjan Software, Inc.</p> <p>22 Q. And that's also a Delaware company?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. I believe.</p> <p>25 Q. I get that just so you know what</p> <p style="text-align: right;">55</p>
<p>2 I'm talking about.</p> <p>3 A. It is.</p> <p>4 Q. Do any of the companies listed on</p> <p>5 this page seven pay income taxes in the</p> <p>6 United States?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know which company on this</p> <p>9 invoice lists the U.S. sales of Finjan?</p> <p>10 MR. HANNAH: Objection to form.</p> <p>11 A. I'm not sure, I think it's</p> <p>12 Finjan, Inc.</p> <p>13 Q. Do you know which company on this</p> <p>14 list invoices the sales outside the U.S.?</p> <p>15 MR. HANNAH: Objection to form.</p> <p>16 A. Again, I'm not sure. It's Finjan</p> <p>17 Software Limited as we discussed before.</p> <p>18 Q. Finjan Software Limited is the</p> <p>19 company listed as number one here or the</p> <p>20 Israeli subsidiary?</p> <p>21 A. Exactly.</p> <p>22 Q. Do Finjan Software U.K. Limited or</p> <p>23 Finjan Software GMBH have any sales?</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 A. No.</p> <p style="text-align: right;">56</p>	<p>2 Q. Does Finjan Software Inc., the</p> <p>3 ultimate parent company, have any sales?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. I don't know.</p> <p>6 Q. Now, when you see Mr. Kraitsman's</p> <p>7 report, is it accurate that all of the sales</p> <p>8 are reported on a consolidated basis, they</p> <p>9 are not reported to a particular company?</p> <p>10 MR. HANNAH: Objection to form.</p> <p>11 A. It's consolidated.</p> <p>12 Q. I would like to ask you about the</p> <p>13 consolidated balance sheets that are on</p> <p>14 page three of this report. It's control</p> <p>15 numbers 9699.</p> <p>16 A. Page three, yes.</p> <p>17 Q. So first, I have just some basic</p> <p>18 questions that may clarify this for folks who</p> <p>19 are not used to reading financial statements.</p> <p>20 I see at the top it says that is a</p> <p>21 consolidated balance sheet for Finjan</p> <p>22 Software, Inc. and its subsidiaries.</p> <p>23 Does that mean that the numbers</p> <p>24 reported here aggregate numbers for all the</p> <p>25 Finjan companies together?</p> <p style="text-align: right;">57</p>

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<p>2 A. Yes.</p> <p>3 Q. It says here that it's reported in</p> <p>4 U.S. dollars in thousands; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. So if I look at the current assets</p> <p>7 for December 31, 2005 and I see the number</p> <p>8 8526; is it correct that's \$8,526,000?</p> <p>9 A. Yes.</p> <p>10 Q. And that's because it's reported in</p> <p>11 thousands, you have to add three zeros?</p> <p>12 A. Oh, you are asking me?</p> <p>13 Q. Yeah.</p> <p>14 A. I thought you were answering. Yes.</p> <p>15 Q. I know it's finance 101, but I got</p> <p>16 to make sure I get the numbers right.</p> <p>17 A. No, no problem. I didn't recognize</p> <p>18 that was a question.</p> <p>19 Q. Under "current assets" there's a</p> <p>20 line for inventory, do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What is included in inventory for</p> <p>23 Finjan?</p> <p>24 A. Finjan appliances.</p> <p>25 Q. Anything else?</p> <p style="text-align: right;">58</p>	<p>2 A. Rather than the appliances?</p> <p>3 Q. Yeah.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know the basis for the</p> <p>6 inventory, is it cost basis, for example?</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 A. Can you repeat the question?</p> <p>9 Q. Yeah. So the inventory for</p> <p>10 December 31, 2005 is reported as \$420,000; is</p> <p>11 that right?</p> <p>12 A. Yes.</p> <p>13 Q. Is that simply Finjan's cost basis</p> <p>14 to acquire the appliances, or is it something</p> <p>15 else?</p> <p>16 MR. HANNAH: Objection to form.</p> <p>17 A. We are reporting according to GAAP.</p> <p>18 And if you are referring to what should be</p> <p>19 there, so there is a footnote that describes</p> <p>20 exactly that. And just for the record</p> <p>21 according to GAAP you need to mark up or it</p> <p>22 would say it would be cost or market, the</p> <p>23 lower of them, so I don't know if there was</p> <p>24 something here that should have been reduced</p> <p>25 to market, but that's what we do.</p> <p style="text-align: right;">59</p>
<p>2 Q. Okay. And it's not a trick</p> <p>3 question, I mean, I'm literally just asking</p> <p>4 for basics here.</p> <p>5 A. Okay. So we are reporting</p> <p>6 according to GAAP, which is cost to market,</p> <p>7 and if there is a necessity to mark down</p> <p>8 inventory we do that.</p> <p>9 Q. Do you know whether your inventory</p> <p>10 is reported at cost or whether it's reported</p> <p>11 at market?</p> <p>12 A. I would refer you to the note, and</p> <p>13 what I'd say if there is any obsolescence of</p> <p>14 inventory so we either write-off the</p> <p>15 inventory or mark it down to the real market</p> <p>16 value.</p> <p>17 Q. I did not find a footnote that</p> <p>18 elaborates on inventory.</p> <p>19 Do you think there might be one?</p> <p>20 A. There should be if there isn't so</p> <p>21 we will find it. We need to read through it.</p> <p>22 Q. Okay.</p> <p>23 A. Just for the record, this report</p> <p>24 was not a report that I created, so...</p> <p>25 Q. I understand.</p> <p style="text-align: right;">60</p>	<p>2 Okay. So I see there's a note in</p> <p>3 the 2006 report. When we get to that we'll</p> <p>4 look at it.</p> <p>5 A. Oh, okay. So I apologize because</p> <p>6 probably it's in the 2006 report, which I'm</p> <p>7 not familiar with.</p> <p>8 Q. Okay. There's a line item here for</p> <p>9 a severance pay fund.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with what the</p> <p>13 severance pay fund is?</p> <p>14 A. Again, define what is "familiar</p> <p>15 with."</p> <p>16 Q. Do you know why there's a severance</p> <p>17 fund for about \$384,000 in December 31, 2005?</p> <p>18 A. Yes.</p> <p>19 Q. Why is that?</p> <p>20 A. Again, it's described in a note, it</p> <p>21 says that according to the Israeli law there</p> <p>22 should be one month severance per year of</p> <p>23 seniority. And it's calculated to according</p> <p>24 to the number of employees, the seniority and</p> <p>25 one month severance, so multiply.</p> <p style="text-align: right;">61</p>

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<p>2 Q. Is the company actually paying a 3 severance, any severance currently? 4 MR. HANNAH: Objection to form. 5 A. Again, I need to understand your 6 question. 7 Q. Sure. Do you have a current 8 severance expense that you are paying out as 9 opposed to a fund that's a reserve? 10 A. Okay. So according to the Israeli 11 law if employee is terminated you have to pay 12 them severance so when you say "current" it's 13 the usual course of business. So if somebody 14 is asked to leave the company he is paid 15 severance. 16 Q. Do you believe there's an ongoing 17 actual severance expense in 2007? 18 A. So when you say "severance expense" 19 you are referring to the accrual, not to the 20 cash payment. 21 Q. All right. Thank you for 22 clarifying. That is my question. 23 I understand you are required to 24 accrue for severance, do you believe in 2007 25 that Finjan is actually making severance</p>	<p>2 payments? 3 MR. HANNAH: Objection to form. 4 A. Yes. 5 Q. I have a question about the current 6 liabilities. There's a line for deferred 7 revenues. 8 Do you see that? 9 A. Yes. 10 Q. What is included in deferred 11 revenues? 12 A. The way Finjan operates is that 13 when there is a subscription based customer 14 that we invoice the portion of revenue that 15 is not recognized, although it was invoiced 16 appears on the deferred revenue line. 17 Q. Is that the income which is 18 prorated according to the formula we 19 discussed earlier based on subscriptions? 20 MR. HANNAH: Objection to form. 21 A. Yes. 22 Q. And because I'm not a financial 23 person it doesn't seem intuitive to me that 24 it's reported as a liability. 25 Can you explain why it's a</p>
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<p>2 liability? 3 A. So I will explain. If you look and 4 we can take an example, if there is a 5 customer that has signed a subscription for 6 three years. 7 Q. Yeah. 8 A. So we will -- and let's say the 9 financial report is a month after the 10 subscription base was signed, so once a 11 subscription agreement was signed we prorate 12 it over six months and every month we 13 recognize the revenues. But since we invoice 14 the customer and are being paid for, so all 15 the deferred revenues are a liability of the 16 company until we recognize it on a monthly 17 basis. 18 Q. I see. So you recognize the cash 19 at signing, I mean you receive a cash payment 20 at the beginning of the subscription period? 21 MR. HANNAH: Objection to form. 22 A. Yes. 23 Q. And is that cash payment generally 24 the entire payment for the duration of the 25 subscription?</p>	<p>2 A. It's my responsibility as the CFO 3 to make sure its the entire payment but, you 4 know, there are customers that negotiate it 5 so... 6 Q. Okay. 7 A. That defers the question what am I 8 involved with, but usually. 9 Q. Okay. There's a number at the 10 bottom of this, near the bottom of this 11 balance sheet which is accumulated deficit. 12 Do you see that? 13 A. Yes. 14 Q. What is the accumulated deficit? 15 A. Again, could you explain your 16 question. 17 Q. Yeah. Let me ask the more basic 18 question. 19 For this 2005 financial statement 20 is the accumulated deficit at the end of 2005 21 \$39,790,000? 22 A. Yes. 23 Q. What does an "accumulated deficit" 24 mean? 25 A. Accumulated deficit is the result</p>
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<p>2 of the accumulated losses of the company 3 since time of inception. 4 Q. Is it correct then as of the end of 5 2005 Finjan was reporting accumulative loss 6 for the history of the company of just under 7 \$40 million? 8 MR. HANNAH: Objection to form. 9 A. Yes. 10 Q. Okay. I'm now going to ask you 11 about the consolidated statement of 12 operations on the next page four of the 2005 13 consolidated financial statement. 14 Do you have that in front of you? 15 A. Yes, page four. 16 Q. The top line reports for 2005 17 revenues of \$6,877,000; is that right? 18 A. Yes. 19 Q. And then there is a patent license 20 revenue of an additional \$8 million? 21 A. Yes. 22 Q. And do you know if that \$8 million 23 is entirely attributable to the Microsoft 24 agreement? 25 MR. HANNAH: Objection to form.</p>	<p>2 A. It is, and I think there is a 3 footnote that relates to that. 4 Q. I think you are right. There is a 5 line, there's a line in the statement of 6 operations for cost of revenues. 7 Do you see that? 8 A. Yes. 9 Q. What's included in Finjan's costs 10 of revenues? 11 A. Cost of revenues are relating and 12 I'm not sure I'm covering all the items, are 13 relating to the cost of the appliances, the 14 cost of any third-party licensing and cost of 15 the services, that means the support and 16 maintenance, the operations people and I 17 think these are the major items. There could 18 be some other smaller -- other small items 19 that I don't recall. 20 Q. Do you know what third-party 21 licenses there are that are reflected in 22 costs of revenues? 23 MR. HANNAH: Objection to form. 24 A. For 2005 I do not know. 25 Q. Do you know currently what they</p>	66	67
<p>2 are? 3 A. Yes. 4 Q. What are they? 5 A. We have a third-party licenses that 6 we pay for software that is installed in our 7 appliances which is, you know, an antivirus 8 software and URL filtering software. 9 Q. Is that, for example, payments to 10 McAfee and Sophos and Kasperski? 11 A. Yes. 12 Q. Are the cost of revenues all 13 variable based on a level of sales? 14 MR. HANNAH: Objection to form. 15 A. No. 16 Q. Which ones are not variable based 17 on sales? 18 A. There would be their components as 19 I told you, salaries are not variable to 20 level of sales, they are support people. The 21 other portion would be if there are 22 appliances that we decided to write off that 23 wouldn't be, depending on level of sales. 24 Q. In general, are the appliances 25 directly variable in proportion to sales?</p>	<p>2 MR. HANNAH: Objection to form. 3 A. What do you define as "in general"? 4 Q. Okay. Are the appliances directly 5 variable in proportion to sales? 6 MR. HANNAH: Objection to form. 7 A. Again, when you are saying "in 8 proportion to sales," this number here is a 9 number that is a prorated, a prorated revenue 10 on a monthly basis. The appliances that you 11 see here are also prorated, at least some of 12 the cost of sales. So if you refer back to 13 the balance sheet you will see that there is 14 a line that says deferred costs, so we also 15 prorate the costs, so I don't want to say 16 this is the line because there is some 17 matching between the revenues and the cost. 18 Q. Okay. Do you at some point do a 19 variance to account for any differences in 20 deferred costs and deferred revenues? 21 MR. HANNAH: Objection to form. 22 A. I don't understand your question. 23 Q. Okay. Do you ever have a situation 24 where the amount of your deferred costs 25 varies from what you expected?</p>	68	69

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<p>2 MR. HANNAH: Objection to form.</p> <p>3 MR. HOLDREITH: I'm sorry, let me</p> <p>4 ask maybe a more basic question.</p> <p>5 Q. When you prorate deferred costs, do</p> <p>6 you have an actual cost number that is known</p> <p>7 that you can prorate?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay.</p> <p>10 A. I believe it's calculation that's</p> <p>11 done by the accounting, I didn't go into the</p> <p>12 details of how it's calculated.</p> <p>13 Q. Okay. All right:</p> <p>14 What is included in deferred costs?</p> <p>15 A. As I said, the cost of the</p> <p>16 appliances that are prorated over -- the</p> <p>17 revenues that were prorated over the three</p> <p>18 years, so we prorate the cost as well and</p> <p>19 defer the relevant portion over the period of</p> <p>20 the subscription.</p> <p>21 Q. Do you prorate only the cost of the</p> <p>22 appliances or all of the cost of revenues?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. We don't prorate only the</p> <p>25 appliances because there is also software</p> <p style="text-align: right;">70</p>	<p>2 that is installed on the appliances that we</p> <p>3 prorate, as well the third-party software,</p> <p>4 it's also subscription based. The cost, the</p> <p>5 other costs are not prorated.</p> <p>6 Q. Okay. So the prorated costs are</p> <p>7 appliances, payments to third parties for</p> <p>8 their software, anything else?</p> <p>9 A. Appliances, payment, these are the</p> <p>10 major items.</p> <p>11 Q. And with that understanding now,</p> <p>12 are the costs of appliances and third-party</p> <p>13 licenses variable with sales?</p> <p>14 A. So it's not that simple because</p> <p>15 there could be a subscription that would be</p> <p>16 for three years with the customer but I would</p> <p>17 say the antivirus would be for one year. So</p> <p>18 there was some matching to do there, but in</p> <p>19 general what you are saying is true.</p> <p>20 Q. There's a line for gross profit.</p> <p>21 Is that simply revenues minus costs of</p> <p>22 revenues?</p> <p>23 A. Yes.</p> <p>24 Q. Then there are three categories of</p> <p>25 operating expenses; is that right?</p> <p style="text-align: right;">71</p>
<p>2 A. I don't understand the question.</p> <p>3 Q. Below gross profit I see a line for</p> <p>4 operating expenses.</p> <p>5 Do you see that?</p> <p>6 A. Oh, yeah, okay.</p> <p>7 Q. That's broken into three</p> <p>8 categories?</p> <p>9 A. The three line items, yes.</p> <p>10 Q. Which of the operating expenses are</p> <p>11 variable?</p> <p>12 MR. HANNAH: Objection to form.</p> <p>13 A. What do you mean by "variable"?</p> <p>14 Q. Which of the operating expenses</p> <p>15 will go up or down if sales go up or down?</p> <p>16 MR. HANNAH: Objection to form.</p> <p>17 A. I believe the selling and marketing</p> <p>18 would be I would say more tightly linked to</p> <p>19 that, but it's not a one-to-one.</p> <p>20 Q. Okay. How about your general and</p> <p>21 administrative, does that vary with sales?</p> <p>22 A. No.</p> <p>23 Q. If you were to increase your sales</p> <p>24 by let's say 400 percent, four times current</p> <p>25 level, would you need to hire anymore</p> <p style="text-align: right;">72</p>	<p>2 employees for general and administrative</p> <p>3 purposes?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. So now I understand your question.</p> <p>6 Q. Okay.</p> <p>7 A. All the line items will be variable</p> <p>8 with sales to the extent that you multiply</p> <p>9 the sales by four. I thought you were</p> <p>10 referring to a direct cost that varies while</p> <p>11 the sales change.</p> <p>12 Q. Okay.</p> <p>13 A. So these are not direct costs but</p> <p>14 they would vary as the sale change especially</p> <p>15 if you are speaking for 40 percent growth.</p> <p>16 Q. Do you have any understanding of</p> <p>17 what your capacity is right now to increase</p> <p>18 sales without increasing your operating</p> <p>19 expenses?</p> <p>20 MR. HANNAH: Objection to form.</p> <p>21 A. So I would like you to repeat the</p> <p>22 question.</p> <p>23 Q. Sure. I'm trying to understand</p> <p>24 whether you've studied how much your sales</p> <p>25 can increase given your current structure</p> <p style="text-align: right;">73</p>

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<p>2 without adding to these operating expenses, 3 if you doubled sales, would you have to 4 increase operating expenses? 5 MR. HANNAH: Objection to form. 6 A. I believe, I mean, you are looking 7 at the 2005 report, so if you look at this 8 cost structure, I don't think it reflects our 9 current cost structure. 10 Q. Okay. 11 A. So what are you referring by your 12 question? 13 Q. I am wondering about 2005, 2004, 14 that time period. 15 Do you know what the capacity of 16 the company was to increase sales at that 17 time? 18 MR. HANNAH: Objection to form. 19 A. No. 20 Q. Do you have within Finjan anymore 21 detail on the line items that make up each of 22 the three operating expense categories? 23 MR. HANNAH: Objection to form. 24 A. So again I will need to understand 25 what you refer to by "more details"?</p> <p style="text-align: right;">74</p>	<p>2 Q. Sure, I'll take an example. For 3 general and administrative, if you want to 4 know what costs were aggregated to make up 5 the \$2.7 million in 2005, do you have records 6 that will show you what costs are included in 7 that number? 8 A. Yes. 9 MR. HANNAH: Objection to form. 10 Q. Where are those records? 11 A. They are within the accounting 12 system. 13 Q. Can you ask for a report today that 14 would give you those, those costs that make 15 up the general and administrative? 16 A. Again, when you say for breakdown, 17 are you referring to a breakdown, I mean 18 breakdown could be many variations, so what 19 do you require? 20 Q. At what level of detail do you 21 understand general administrative costs are 22 kept in a broken down form at Finjan? 23 MR. HANNAH: Objection to form. 24 A. So I don't know what level is kept 25 at Finjan, I know what I'm asking usually to</p> <p style="text-align: right;">75</p>
<p>2 know what's containing in a certain line 3 item. Usually for general administrative it 4 would be what are the salaries that are 5 related to that, what are the facility costs 6 that would be there, what are the cost of our 7 general account sale and auditors. So all of 8 that would be included in general 9 administrative, maybe travels, you know, the 10 travel costs, there are employee, employee 11 activities, you know, that will be included 12 there like company events, etc. So all of 13 that are included in that line. 14 Q. Okay. Would you expect that you 15 could ask for a report that would break down 16 each of the separate items you just mentioned 17 for general and administrative? 18 A. Again, the question was if I 19 expect? 20 Q. If you expect that at Finjan there 21 are records that break down each the line 22 items you just mentioned for general and 23 administrative? 24 MR. HANNAH: Objection to form. 25 A. Finjan would or should have this</p> <p style="text-align: right;">76</p>	<p>2 breakdown. I personally did not see the 3 breakdown for previous years. 4 Q. I understand. Have you looked at 5 that break down for -- back up. 6 Did you work on the 2006 7 consolidated financial statement? 8 A. No, but I received it as I would 9 say as a finished product. 10 Q. I would like to ask you about the 11 selling and marketing expense in this report. 12 A. Okay. 13 Q. For 2005 that was just a little 14 over \$7 million? 15 A. Yes. 16 Q. And selling and marketing, at least 17 on this report, is the largest expense that's 18 reported; is that right? 19 A. Yes. 20 Q. Is that always the case, is 21 Finjan's highest expense item always selling 22 and marketing? 23 MR. HANNAH: Objection to form. 24 A. I don't know. 25 Q. It says here it's selling and</p> <p style="text-align: right;">77</p>

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<p>2 marketing, comma, net, do you know what is 3 netted from that? 4 A. What is "net" referring to? 5 Q. Yeah. 6 A. No. 7 Q. Okay. What is included in selling 8 and marketing expense? 9 A. Okay. So again, there are salaries 10 that are included there. 11 Q. Of salespeople or something else? 12 A. Salaries of the sales and marketing 13 people. 14 Q. Okay. 15 A. And there would be commissions for 16 the salespeople. 17 Q. Okay. 18 A. There would be all the office 19 expenses that are related to our sales 20 offices and there would be the travels that 21 are related to that. There would be 22 participation in trade shows probably, all 23 our marketing activities that, you know, 24 brochure, printouts, handouts that we will 25 give to our customers and probably I missed a</p> <p style="text-align: right;">78</p>	<p>2 few ones, but these are the major ones. 3 Q. Okay. What is the commission 4 structure for Finjan? 5 MR. HANNAH: Objection to form. 6 A. Again, you will need to explain 7 what you mean by that. 8 Q. What is the basis on which you pay 9 commissions? 10 A. The basis? 11 Q. Yeah, is it based on sales, for 12 example? 13 A. The commissions are based on sales, 14 yes. 15 Q. And are the commissions paid to 16 sales employees of Finjan or to somebody else 17 or both? 18 MR. HANNAH: Objection to form. 19 A. The question was to sales employees 20 or somebody else? 21 Q. Right. 22 A. Who is the somebody else? 23 Q. I'll break it down. 24 Are there commissions paid to sales 25 employees of Finjan?</p> <p style="text-align: right;">79</p>
<p>2 A. Yes. 3 Q. Do you pay commissions to any other 4 sales, for example, resellers or 5 representatives who are not direct employees 6 of Finjan? 7 MR. HANNAH: Objection to form. 8 A. Okay. So now I will refer to what 9 do you define "commission" as? 10 Q. Well, I'm using your term. I don't 11 know, you are the financial guy. 12 Do you have a separate line item 13 for commissions in your financials? 14 A. No. 15 Q. So if you wanted to know the amount 16 of just the commissions paid in 2005 by 17 Finjan, could you find that out? 18 A. Yes. 19 Q. How would you find that out? 20 A. I would ask for report that 21 provides that. 22 Q. Those commissions, are they paid to 23 anyone other than direct employees of Finjan? 24 MR. HANNAH: Objection to form. 25 A. No.</p> <p style="text-align: right;">80</p>	<p>2 Q. Do all of the salespeople have the 3 same commission structure or does it change 4 from person to person? 5 A. It changes. 6 Q. Is it correct that you would expect 7 commissions to go up or down directly in 8 proportion to sales? 9 MR. HANNAH: Objection to form. 10 A. Yes. 11 Q. Are there any other selling and 12 marketing expenses that vary directly in 13 proportion to sales other than commissions? 14 MR. HANNAH: Objection to form. 15 A. Are you referring just to the 16 selling and marketing? 17 Q. Right. 18 A. If you are speaking it would vary 19 directly to sales, it would be only 20 commissions. 21 Q. Okay. Do you know what portion the 22 commissions are of selling and marketing 23 expense? 24 A. No. 25 Q. Do you know if it's as much as</p> <p style="text-align: right;">81</p>

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<p>2 half?</p> <p>3 A. If it's as much as half of the</p> <p>4 number that you see here of the 7 million?</p> <p>5 Q. Right.</p> <p>6 A. I don't think it is that high.</p> <p>7 Q. I'm rolling right along, and I have</p> <p>8 not taken our break that I normally take, so</p> <p>9 let me know but let's go ahead and take a</p> <p>10 five-minute break right now.</p> <p>11 MR. VIDEOGRAPHER: 11:07. Off the</p> <p>12 record.</p> <p>13 (Recess taken.)</p> <p>14 MR. VIDEOGRAPHER: It's 11:19. On</p> <p>15 the record.</p> <p>16 Q. Mr. Sofer, do you have a process</p> <p>17 where you set budgets?</p> <p>18 A. What was the question?</p> <p>19 Q. Does Finjan set budgets?</p> <p>20 A. "Set"?</p> <p>21 Q. Yeah.</p> <p>22 A. Yes.</p> <p>23 Q. Is there a budget for selling and</p> <p>24 marketing expense?</p> <p>25 A. Yes.</p> <p style="text-align: right;">82</p>	<p>2 Q. How do you set the budget for</p> <p>3 selling and marketing expense?</p> <p>4 A. The budget is set by getting the</p> <p>5 information from the various people in the</p> <p>6 organization, then it's put together.</p> <p>7 Q. Is budgeting an annual process?</p> <p>8 A. Yes.</p> <p>9 Q. When do you do budgeting?</p> <p>10 A. I don't know because I didn't go</p> <p>11 through that process.</p> <p>12 Q. Okay. Is there a budget for 2007?</p> <p>13 A. Yes.</p> <p>14 Q. Is it in writing somewhere?</p> <p>15 A. Yes.</p> <p>16 Q. And have you seen it?</p> <p>17 A. Yes.</p> <p>18 Q. Who keeps the budget?</p> <p>19 A. The finance team in Israel.</p> <p>20 MR. HOLDREITH: Counsel, I did not</p> <p>21 find any budgets when I was going</p> <p>22 through documents.</p> <p>23 Do you know if the budgets have</p> <p>24 been produced.</p> <p>25 MR. HANNAH: I'm not sure, but we</p> <p style="text-align: right;">83</p>
<p>2 can look into it.</p> <p>3 MR. HOLDREITH: If that's something</p> <p>4 that could be available today, that</p> <p>5 would be very helpful, as well. Maybe</p> <p>6 at lunch you can look into that.</p> <p>7 Thanks.</p> <p>8 Q. Have you been able -- do you know</p> <p>9 if Finjan has been able to keep its expenses</p> <p>10 close to budget?</p> <p>11 A. I don't know. I mean, if you are</p> <p>12 referring to previous years I really have no</p> <p>13 idea.</p> <p>14 Q. How about in 2007 so far?</p> <p>15 A. 2007 we are more or less in the</p> <p>16 range of the budget.</p> <p>17 Q. Do you know what the budgeted</p> <p>18 amount for selling and marketing is in 2007?</p> <p>19 A. I don't remember on the top of --</p> <p>20 off the top of my head, I don't remember this</p> <p>21 number.</p> <p>22 Q. Maybe if we can get a copy of the</p> <p>23 budget at lunchtime we can go through that.</p> <p>24 I see that in 2005 at least the amount of</p> <p>25 selling and marketing expense exceeded the</p> <p style="text-align: right;">84</p>	<p>2 revenues.</p> <p>3 Would you agree with that?</p> <p>4 A. You are referring to the 7.1?</p> <p>5 Q. Right.</p> <p>6 A. Versus the 6.9?</p> <p>7 Q. Right.</p> <p>8 A. So it's larger, I agree.</p> <p>9 Q. Is there a plan that you know of</p> <p>10 for either increasing revenue or decreasing</p> <p>11 selling and marketing so that revenue will</p> <p>12 exceed the selling and marketing expense?</p> <p>13 MR. HANNAH: Objection to form.</p> <p>14 A. Again, you ask me if I know of a</p> <p>15 plan?</p> <p>16 Q. Yeah.</p> <p>17 A. So are you referring to what you</p> <p>18 see here or for the -- to the future?</p> <p>19 Q. For the future.</p> <p>20 A. So Finjan has plans to increase its</p> <p>21 revenues, of course.</p> <p>22 Q. Are there specific plans as opposed</p> <p>23 to obviously I mean the goal of a company is</p> <p>24 to make revenue, but is there a specific plan</p> <p>25 for how to increase revenue?</p> <p style="text-align: right;">85</p>

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<p>2 MR. HANNAH: Objection to form. 3 A. What do you refer by "specific"? 4 Q. Is there a written plan, for 5 example, that has particular goals for the 6 company or tasks to increase revenue? 7 A. I do not see a specific plan that 8 is detailed by goals, but the budget number 9 is bigger than this number, so obviously it's 10 a growth. 11 Q. Okay. Is there a budgeted revenue 12 number in the budget? 13 A. Again, we need to define what is 14 revenue. 15 Q. Okay. I don't understand. Why is 16 that? 17 A. Because here what you see and as I 18 told you before, this is the GAAP revenue 19 which is a prorated revenue on a monthly 20 basis, and there is -- depends when is the 21 cutoff of the report. 22 Q. Okay. 23 A. And so it's a different number 24 than, you know, having revenues that are 25 based on purchase orders that are signed.</p>	<p>2 Q. Is there some revenue number in the 3 budget? 4 A. There is. 5 Q. What is the basis for the revenue 6 number in the budget in 2007? 7 A. So in 2007 the budget number is 8 based on bookings. 9 Q. How detailed is the budget that you 10 are referring to, is it a greater level of 11 detail, for example, than this statement of 12 operations? 13 A. It's a one-page -- I think it's 14 more or less the same level of details. So 15 maybe the revenues you would see a breakdown 16 to two lines between U.S. and rest of the 17 world. 18 Q. Okay. 19 A. Other than that I don't think there 20 is much higher breakdown. 21 Q. Are there -- in past years were 22 there budgets? 23 A. I don't know. 24 Q. Who would you ask about that? 25 A. Who would I ask?</p>
86	87
<p>2 Q. Yeah? 3 A. If there were budget in last year? 4 Q. If you want to know was there a 5 budget in 2004, who would you ask? 6 A. Okay. So if it was in 2004 our 7 current CEO wasn't there as well, he came in 8 mid 2005, I think or July 2005, so the answer 9 if there was budget in 2004 we need to find 10 somebody that was there. I believe there are 11 some veterans in the finance department that 12 would know that, so I would ask them. 13 Q. Okay. Just for those who may not 14 be familiar with reading a financial 15 statement, the line that says "operating 16 loss," is that simply gross profit less total 17 operating expenses? 18 A. Again, you are referring to the 19 operating loss? 20 Q. Right. 21 A. In the financial reports of Finjan? 22 Q. Right. 23 A. Yes. 24 Q. Here it's shown in parenthesis 25 because it's a loss as opposed to a profit;</p>	<p>2 is that right? 3 A. Yes. 4 Q. According to this document, 5 Exhibit 1001, in 2005 the operating loss was 6 about \$846,000? 7 A. Yes. 8 MR. HANNAH: Objection to form. 9 Q. But for the Microsoft license that 10 operating loss would have been about 11 \$8,846,000; is that right? 12 MR. HANNAH: Objection to form. 13 A. Yes. 14 Q. Is there -- 15 A. Again, I need to caveat what I'm 16 saying because probably in the expenses in 17 this year there are a lot of expenses that 18 are related to this 8 million revenue. So if 19 you eliminate them probably we need to 20 eliminate some legal costs that are related 21 to that. 22 Q. Okay. Do you have any idea of what 23 costs there are that were related to the 24 Microsoft license? 25 A. No idea.</p>
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<p>2 Q. Do you know if there are any 3 ongoing license revenues that are reported 4 apart from revenues similar to the one 5 reported for 2005 on Exhibit 1001? 6 MR. HANNAH: Objection to form. 7 A. So you will need to define what is 8 "ongoing." 9 Q. I haven't in any of the other 10 financial statements and I'll mark them all 11 and show them to you, I haven't seen a 12 separate line item for license revenues with 13 any amount other than in 2005. 14 Are you aware of any license 15 revenues other than the \$8 million to 16 Microsoft that the company is receiving 17 currently? 18 MR. HANNAH: Objection to form. 19 A. So if you are looking at my tenure 20 with the company, I'm not aware of license 21 revenues. 22 Q. Do you know if the company pays out 23 any patent license royalties to anybody? 24 MR. HANNAH: Objection to form. 25 A. If Finjan pays, again, patent</p> <p style="text-align: right;">90</p>	<p>2 license, what are you referring to by "patent 3 licenses"?" 4 Q. Is there any line item you know of 5 in Finjan's expenses which is a line item for 6 patent royalties payable to anyone? 7 MR. HANNAH: Objection to form. 8 A. So again as I said before, we are 9 paying licenses for the antivirus and for the 10 URL filtering, if it's defined as royalties 11 or I don't know patent licenses, I don't know 12 what is the clear definition, but if you 13 think of one time payment like we had with 14 Microsoft, so I don't -- 15 Q. I understand, I understand the 16 clarification you are asking for. So in 17 order to take the question very specific I'm 18 wondering if Finjan reports a line item that 19 you call patent royalties that you pay to 20 other companies? 21 MR. HANNAH: Objection to form. 22 Q. Is it named that in your records? 23 MR. HANNAH: Objection to form. 24 A. So in our records we do not 25 separate that line, any line so...</p> <p style="text-align: right;">91</p>
<p>2 Q. Okay. 3 A. This is part of cost of sales so 4 there are royalties that are paid part of the 5 cost of sales. If they are named patent 6 licensing, I have no idea. 7 Q. Okay. Are the -- are there records 8 which break out the amount of the payments to 9 third parties, whether they are called patent 10 royalties or not? 11 MR. HANNAH: Objection. 12 A. Again when you refer to "records," 13 what are these? 14 Q. Anywhere if you wanted to know in 15 2006 how much you paid to McAfee, could you 16 find that information? 17 A. I would need to ask the accounting 18 staff to provide it to me, probably take some 19 digging, but I believe they could provide it. 20 Q. I would like to ask another 21 question about page seven of the report where 22 the companies are identified. So this is the 23 page numbered FIN 9703 on Exhibit 1001. 24 Do you have that in front of you? 25 A. Yes.</p> <p style="text-align: right;">92</p>	<p>2 Q. The very bottom of the page there's 3 a discussion of a stock purchase agreement. 4 Do you see that? 5 A. Yes. 6 Q. Do you know that that major new 7 investor who was a party to that stock 8 purchase agreement in June 2004 that was 9 Microsoft? 10 MR. HANNAH: Objection to form. 11 A. I would need to read it to know if 12 that is the case. But in general this was 13 before my time, so I don't know really who 14 that was. 15 Q. Okay. 16 A. From what I see here is looks like 17 Microsoft. 18 Q. All right. Whoever it was, can you 19 tell from reading this paragraph or do you 20 know separately, is it correct that the 21 company raised about \$10 million from the 22 sale of shares that are discussed in 23 paragraph B here on this page FIN 9703? 24 MR. HANNAH: Objection to form. 25 A. Okay. Now, when you say "raised,"</p> <p style="text-align: right;">93</p>

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<p>2 what do you mean by that?</p> <p>3 Q. Well, this paragraph describes a</p> <p>4 transaction where the company sold stock to</p> <p>5 an investor, right?</p> <p>6 A. Um-hum.</p> <p>7 Q. And the investor made a payment to</p> <p>8 the company?</p> <p>9 A. Yes.</p> <p>10 Q. And the payment the investor made</p> <p>11 to the company was about \$10 million?</p> <p>12 MR. HANNAH: Objection to form.</p> <p>13 A. Okay. So that was the</p> <p>14 consideration for the company as part of the</p> <p>15 stock purchase agreement. I don't know if it</p> <p>16 was a round of funding, so that's why I'm</p> <p>17 saying the word "raised."</p> <p>18 Q. You don't know if that was cash to</p> <p>19 the company?</p> <p>20 A. No.</p> <p>21 Q. I have a question about the next</p> <p>22 page eight on Exhibit 1001. In note two</p> <p>23 there's a paragraph B and that says that most</p> <p>24 of the company's revenues are generated in</p> <p>25 U.S. dollars.</p> <p style="text-align: right;">94</p>	<p>2 Do you see that?</p> <p>3 A. In paragraph B?</p> <p>4 Q. Right.</p> <p>5 A. Which line?</p> <p>6 Q. So I can point it out to you?</p> <p>7 A. The function of currency of the</p> <p>8 company?</p> <p>9 Q. Correct. Near the bottom of that</p> <p>10 paragraph, the last sentence three lines up</p> <p>11 from the bottom says "most of the company's</p> <p>12 revenues are generated in U.S. dollars."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that because most of the</p> <p>16 company's sales are in the U.S., or is it for</p> <p>17 a different reason?</p> <p>18 MR. HANNAH: Objection to form.</p> <p>19 A. This is a good question. It's not</p> <p>20 because most of the company revenues are</p> <p>21 generated in the U.S.</p> <p>22 Q. Are payments for sales outside the</p> <p>23 U.S. made in U.S. dollars?</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 A. Again, this is -- here the sentence</p> <p style="text-align: right;">95</p>
<p>2 is speaking of revenues, not of payments.</p> <p>3 Q. Okay.</p> <p>4 A. So what is your question?</p> <p>5 Q. Well, I'm trying to understand</p> <p>6 which, which revenues there are that are</p> <p>7 generated in U.S. dollars.</p> <p>8 Do you know what they are?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. So there could be revenues outside</p> <p>11 of the U.S., in Europe, in the far east or</p> <p>12 where revenues were closed in 2005 that were</p> <p>13 nominated in U.S. dollar, so the purchase</p> <p>14 order would be in U.S. dollar.</p> <p>15 Q. Do you know from your experience at</p> <p>16 the company in 2007, is it the case that your</p> <p>17 foreign customers denominate their purchase</p> <p>18 in U.S. dollars?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. Again, it's most, not all.</p> <p>21 Q. Are there deals that you've been</p> <p>22 involved with in 2007 that involve foreign</p> <p>23 customers?</p> <p>24 A. In 2007 I'm trying to think,</p> <p>25 foreign customers outside the U.S.?</p> <p style="text-align: right;">96</p>	<p>2 Q. Yeah.</p> <p>3 A. No, I was not involved.</p> <p>4 Q. All right. Do you know how the</p> <p>5 company's purchase orders are fulfilled?</p> <p>6 In other words, do you know which</p> <p>7 Finjan company ships the appliances?</p> <p>8 MR. HANNAH: Objection to form.</p> <p>9 A. Again, you are referring to the</p> <p>10 subsidiaries or --</p> <p>11 Q. Right.</p> <p>12 A. -- the parent company?</p> <p>13 Q. Correct.</p> <p>14 A. So again, can you repeat the</p> <p>15 question?</p> <p>16 Q. Sure. Do you know which Finjan</p> <p>17 company fulfills sales, for example, which</p> <p>18 company ships appliances to a customer?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. So the appliances' origination of</p> <p>21 shipment will be from Israel.</p> <p>22 Q. All right. And is that true for</p> <p>23 sales that are made inside the U.S.?</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 A. Again, when you are asking would we</p> <p style="text-align: right;">97</p>

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<p>2 ship to a customer from the U.S. or from 3 Israel?</p> <p>4 Q. So the transaction I have in mind 5 is if you have a customer inside the U.S. 6 invoiced by Finjan U.S.A., are the appliances 7 shipped from that customer from Finjan 8 Israel?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. Depends. Sometimes it would be 11 shipped from Finjan, Inc. because we have 12 inventory that is held here. If the sale is 13 very big so the customer requests before end 14 of quarter it might be that we would send 15 some of the equipment directly from Israel. 16 In most cases we ship it from our office in 17 San Jose.</p> <p>18 Q. All right. Are there any cases 19 where you have a customer outside the 20 United States where you ship appliances from 21 San Jose to the customer outside the 22 United States?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. I'm at the company from 2007, I 25 don't really know if this is done before.</p> <p style="text-align: right;">98</p>	<p>2 Q. How about currently?</p> <p>3 A. Currently I'm not aware of any of 4 these shipments.</p> <p>5 Q. Okay.</p> <p>6 A. I don't think there should be, but 7 there might be, I don't know.</p> <p>8 Q. Okay. I have one more question 9 about this 2005 financial statement and it 10 relates to something on page fifteen, it's 11 numbered FIN 9711.</p> <p>12 Do you have page fifteen open in 13 front of you?</p> <p>14 A. Yes.</p> <p>15 Q. All right. My question is about 16 note four, paragraph C at the bottom of the 17 page. It's entitled "legal claim."</p> <p>18 Do you see that?</p> <p>19 A. Um-hum.</p> <p>20 Q. It says "during 2003 the company 21 received a letter from a third-party alleging 22 to a potential infringement of one of that 23 party's patents."</p> <p>24 Are you aware of that allegation of 25 patent infringement?</p> <p style="text-align: right;">99</p>
<p>2 MR. HANNAH: Objection to form.</p> <p>3 A. No.</p> <p>4 Q. Do you know if it was Tumble Weed, 5 is that a familiar name to you?</p> <p>6 A. No.</p> <p>7 Q. The next sentence says "the company 8 responded that it does not believe that its 9 product infringes the above-mentioned 10 patent."</p> <p>11 Do you see that?</p> <p>12 A. Which line do you see now?</p> <p>13 Q. It's the second sentence.</p> <p>14 A. Okay.</p> <p>15 Q. Is there any basis as CFO that you 16 know of that the company needs in order to 17 make a statement that the company does not 18 believe that its product infringes the 19 above-mentioned patent?</p> <p>20 MR. HANNAH: Objection to form.</p> <p>21 A. Can you repeat the question?</p> <p>22 Q. Sure. In order for the company to 23 express that view in an audited financial 24 statement, does the company need to do 25 anything to support the statement?</p> <p style="text-align: right;">100</p>	<p>2 MR. HANNAH: Objection to form and</p> <p>3 I'll caution you to the extent this 4 calls for attorney-client communication, 5 I'll instruct you not to answer, but if 6 you can answer otherwise, go ahead.</p> <p>7 A. You asked if the company needs to 8 take some steps in order to put that or if 9 the CFO needs --</p> <p>10 Q. Right. I'm asking as a CFO who 11 knows about financial statements --</p> <p>12 A. Yes.</p> <p>13 Q. -- do you know whether the company 14 needs to take some steps in order to make a 15 statement like this?</p> <p>16 MR. HANNAH: Objection to form.</p> <p>17 A. This was long before my time, but I 18 really don't know.</p> <p>19 Q. Is it fair to say that at least in 20 that case Finjan, even though it had been 21 accused of infringing a patent, Finjan does 22 not believe that it actually was infringing 23 that patent?</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 A. I don't know because it's 2003</p> <p style="text-align: right;">101</p>

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